

RECEIPT NUMBER
514961

ORIGINAL

20

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

NANCY ENGLAR and CAROL DIEHL,

DEMAND FOR JURY TRIAL

Plaintiffs,

vs.

41B DISTRICT COURT for
Clinton Township, Mt. Clemens, and
Harrison Township;

CHIEF JUDGE LINDA DAVIS, of the
41B District Court, individually
and in her official capacity; and
CHARTER TOWNSHIP OF CLINTON,
a municipal corporation,

JUDGE : Rosen, Gerald E.
DECK : S. Division Civil Deck
DATE : 10/12/2004 @ 11:16:24
CASE NUMBER : 2:04CV73977
CMP NANCY ENGLAR ET AL V 41B
DISTR CT ET AL (DQH)

Defendants.

DEBORAH L. GORDON, PLC.
Deborah L. Gordon (P27058)
Attorneys for Plaintiff
33 Bloomfield Hills Parkway, Suite 275
Bloomfield Hills, Michigan 48304
Telephone 248 258 2500

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COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiffs Nancy Englar and Carol Diehl, by their attorneys Deborah L. Gordon, PLC complain against Defendants as follows:

Jurisdiction and Parties

1. This is an action for deprivation of Plaintiffs' rights under the United States Constitution, for violation of Michigan's Whistleblower Protection Act, and for tortious interference, defamation, and wrongful discharge under Michigan common law, arising out of Plaintiffs' employment relationship with Defendants 41B District Court, Charter

Township of Clinton, and Chief Judge Linda Davis.

2. This is a companion case to a case against the same Defendants, and based on the same occurrence, which is currently pending in United States District Court, Eastern District of Michigan, Case No. 2:04 CV 73957, assigned to Judge Paul D. Borman.

3. This Court has jurisdiction of Plaintiffs' constitutional claims under and pursuant to 42 USC §1983, 28 USC §1343 and 28 USC §1331. Venue lies in the Eastern District of Michigan pursuant to 28 USC 1391(b).

4. This Court has supplemental jurisdiction of Plaintiffs' state law claims pursuant to 28 USC §1337.

5. Plaintiff **Nancy Englар** (hereafter "Plaintiff Englар") is a citizen of the United States and a resident of Clinton Township, Michigan, within the Eastern District of Michigan.

6. Plaintiff **Carol Diehl** (hereafter "Plaintiff Diehl") is a citizen of the United States and a resident of Clinton Township, Michigan, within the Eastern District of Michigan.

7. Defendant **41B District Court** is organized under the laws of the State of Michigan, and is located within the Eastern District of Michigan.

8. Defendant **Charter Township of Clinton** (hereafter "Defendant Clinton Township") is a municipal corporation organized under the laws of the State of Michigan and is located within the Eastern District of Michigan.

9. Defendant **Clinton Township** is the "local funding unit" for Defendant **41B District Court**, Clinton Township division.

10. Defendant **Judge Linda Davis** (hereafter "Defendant Davis") is and was at all

relevant times Chief Judge of Defendant 41B District Court which includes the Clinton Township Division where Plaintiffs **Englar** and **Diehl** were employed. Upon information and belief, Defendant **Davis** resides within the Eastern District of Michigan.

11. Plaintiffs sue Defendant **Davis** in both her individual and official capacities.
12. At all times material to this Complaint, Defendant **Davis** acted under color of law, meaning under color of the statutes, codes, ordinances, regulations, policies, customs and usages of the State of Michigan and/or 41B District Court and/or Clinton Township.
13. The events giving rise to this cause occurred within the Eastern District of Michigan.

Background Facts

14. Plaintiff **Englar** became employed at Defendant 41B District Court, Clinton Township division, in December, 1981, as a landlord-tenant clerk. At the time of her termination in July, 2004, Plaintiff worked as chief probation officer in the probation department.
15. Plaintiff **Diehl** became employed at Defendant 41B District Court, Clinton Township division, in January, 1990, as a cashier/account clerk, a position she held at the time of her termination in July, 2004.
16. Throughout the course of their employment with Defendants, Plaintiffs have performed their job duties in a manner that was satisfactory or better.
17. Defendant **Davis** is Chief Judge for Defendant 41B District Court which includes two divisions and/or locations - Mt. Clemens and Clinton Township.
18. Defendant **Davis**, along with Judge John Foster, preside at Defendant 41B District Court's Mt. Clemens division or location, while Judge William Cannon presides

at its Clinton Township division.

19. Defendant **Davis** has for a number of years been at the forefront of efforts to merge Defendant **41B District Court's** Mt. Clemens division with its Clinton Township division.

20. Upon information and belief, Judge Cannon has objected to these merger efforts, and in particular Defendant **Davis**'s timetable for completing the merger.

21. Upon information and belief, the aforementioned merger effort would personally and politically benefit Defendant **Davis**.

22. At all times material to this Complaint, Plaintiffs had close associations with Judge Cannon and his wife and with each other.

23. Employees at Defendant **41B District Court's** Mt. Clemens division were at all relevant times unionized, while employees at the Clinton Township division were not unionized.

24. During the time period when discussions and meetings regarding the proposed merger of Defendant **41B District Court's** Mt. Clemens and Clinton Township divisions were taking place, Defendant **Davis** made statements that she did not want employees at the Clinton Township division to form a union and other anti-union statements.

25. On June 28, 2004, Plaintiffs attended a meeting at the home of Plaintiff **Englar**, which was also attended by other employees of Defendant **41B District Court's** Clinton Township division and representatives of AFSCME, a union which represents public employees. The purpose of the meeting was to determine whether there was sufficient interest in forming a union at the Clinton Township division.

26. At the aforementioned meeting, Plaintiff **Englar** agreed to be AFSCME's

"contact person" in efforts to organize a union among Defendant 41B District Court's Clinton Township division employees.

27. On June 28, 2004, Defendant **Davis** held a meeting with staff at Defendant 41B District Court, including Plaintiffs **Englar** and **Diehl**, and advised them that government officials would be conducting a "management oversight" review, at which time staff members would be interviewed.

28. At the aforementioned meeting, Plaintiffs and the other staff members were advised that the court was "extremely overstaffed" by 10 or 15 people, but that no one would lose their jobs if they were "honest" during the interviews.

29. On July 6, 2004, Plaintiff **Englar** was interviewed as part of the "management oversight" investigation.

30. At the July 6 interview, Plaintiff **Englar** was asked questions about which she had no personal knowledge, including questions about possible wrongdoing by court personnel.

31. Plaintiff **Englar** answered truthfully during the July 6 interview, and despite numerous leading questions, refused to provide false or misleading information on the subject of possible wrongdoing by court personnel.

32. On July 9 and July 15, 2004, Plaintiff **Diehl** was interviewed as part of the "management oversight" investigation.

33. At the July 9 and July 15 interviews, Plaintiff **Diehl** was asked questions about which she had no personal knowledge, including questions about possible wrongdoing by court personnel.

34. Plaintiff **Diehl** answered truthfully during the July 9and July 15 interviews, and

despite numerous leading questions, refused to provide false or misleading information on the subject of possible wrongdoing by court personnel.

35. On July 15, 2004, Defendant **Davis** summarily terminated Plaintiff **Englar's** employment without notice, warning, a hearing, or any disciplinary steps.

36. On July 15, 2004, Defendant **Davis** summarily terminated Plaintiff **Diehl's** employment without notice, warning, a hearing, or any disciplinary steps.

37. On July 15, 2004, Defendant **Davis** also summarily terminated the employment of Patricia Barachkov, a co-worker and friend of Plaintiff **Englar** and Plaintiff **Diehl**, who had also attended the June 28, 2004 union organizing meeting with AFSCME at Plaintiff **Englar's** home.

38. Barachkov, like Plaintiffs **Englar** and **Diehl**, also had close associations with Judge Cannon and his wife.

39. Plaintiffs **Englar** and **Diehl** were told by Defendant **Davis** that their terminations were related to their "management oversight" interviews.

40. Patricia Barachkov was likewise told that her termination was related to her "management oversight" interview.

41. Plaintiff **Englar** and **Diehl's** terminations were in fact motivated by their close association with Judge Cannon and his wife, their truthful testimony during the "management oversight" investigation, their failure and refusal to fabricate information which would implicate court employees in wrongdoing during that investigation, and their association with union officials and others who were working to organize a union for Plaintiffs and their co-workers.

42. Plaintiff **Englar** and **Diehl's** terminations were further motivated by Defendant

Davis's desire to advance her political and personal agenda.

43. On or about July 15, 2004, Defendant **Davis** announced at a meeting of court employees that Plaintiffs **Englar, Diehl**, and Patricia Barachkov had been terminated on July 15, 2004 for "lying" in their management oversight interviews.

44. In an interview with the Detroit News, Defendant **Davis** stated that Plaintiffs **Englar, Diehl**, and Patricia Barachkov had been terminated on July 15, 2004 for lying in their management oversight investigation interviews.

45. The aforementioned statement by Defendant **Davis** appeared in the Detroit News in July, 2004.

46. Plaintiffs **Englar** and **Diehl** have, to date, never been advised as to what they allegedly "lied" about during their management oversight interviews.

47. Plaintiffs **Englar** and **Diehl**'s personnel files, which they requested and received from Defendants following their terminations, contain no documentation whatsoever concerning their management oversight interview, what they allegedly "lied" about during their management oversight interview, any performance deficiencies or concerns, or any other documentation related to or supporting a termination for cause.

COUNT I
42 USC § 1983 - Freedom of Speech and Association

48. Plaintiffs repeat and reallege the allegations set forth in Paragraphs 1 through 47 as though set forth in full herein.

49. As Chief Judge of **41B District Court**, Defendant **Davis**'s acts represent official policy of Defendant **41B District Court** and Defendant **Clinton Township** and are attributable to Defendants **41B District Court** and Defendant **Clinton Township**.

50. Acting under color of law, Defendant **Davis** promulgated and carried out the official policies, orders and directives described above intentionally and deliberately, with wanton and reckless disregard for the civil and constitutional rights, privileges and sensibilities of Plaintiffs, including the fundamental right to freedom of speech and freedom of association arising out of the First Amendment, and other applicable provisions of the United States Constitution.

51. By promulgating and carrying out the policies, orders and directives described above, Defendant **Davis** has unlawfully violated Plaintiffs' aforesaid constitutional rights.

52. Plaintiffs' aforementioned truthful testimony in a government investigation, their failure and refusal to provide false or misleading information during said investigation, their association with Judge Cannon and his wife, their activities with regard to union organizing efforts and their association with persons involved in union organizing efforts are constitutionally protected activities touching on matters of public concern.

53. At all times material hereto, it was clearly established that retaliation against a public employee for testifying truthfully and refusing to provide false or misleading information in a government investigation was constitutionally impermissible.

54. At all times material hereto, it was clearly established that retaliation against a public employee by a public official for associating with certain members of the community was constitutionally impermissible.

55. At all times material hereto, it was clearly established that retaliation against a public employee by a public official for engaging in union organizing efforts and associating with persons engaged in union organizing efforts was constitutionally impermissible.

56. At all times material hereto, Plaintiffs had a clearly established right of which a reasonable public official would have known, to testify truthfully and refuse to provide false or misleading information in a government investigation without retaliation.

57. At all times material hereto, Plaintiffs had a clearly established right of which a reasonable government official would have known, to associate with certain members of the community without retaliation.

58. At all times material hereto, Plaintiffs had a clearly established right of which a reasonable government official would have known, to engage in union organizing efforts and to associate with persons engaged in union organizing efforts.

59. As a direct and proximate result of Defendants' wrongdoing, Plaintiffs have each sustained loss of earnings and earning capacity, past and future lost earnings, the value of fringe and pension benefits, loss of job and career opportunities, damage to their good names and reputations in the community, mental and emotional distress, humiliation and embarrassment, loss of the enjoyment of the ordinary pleasures of everyday life, and loss of the ability to pursue employment of choice.

**COUNT II
42 USC § 1983 - Due Process**

60. Plaintiffs repeat and reallege the allegations set forth in Paragraphs 1 through 59 as though set forth in full herein.

61. As Chief Judge of 41B District Court, Defendant Davis's acts represent official policy of Defendant 41B District Court and Defendant Clinton Township and are attributable to Defendants 41B District Court and Defendant Clinton Township.

62. Acting under color of law, Defendant Davis promulgated and carried out the

official policies, orders and directives described above intentionally and deliberately, with wanton and reckless disregard for the civil and constitutional rights, privileges and sensibilities of the Plaintiffs, including the fundamental right to due process of law and other applicable provisions of the United States Constitution.

63. By promulgating and carrying out the policies, orders and directives described above, Defendant **Davis** has unlawfully violated Plaintiffs' constitutional rights.

64. Plaintiffs enjoyed a constitutionally protected property interest in continued employment.

65. On July 15, 2004, acting under color of law and pursuant to her authority as Chief Judge, Defendant **Davis** informed Plaintiffs that their employment had been terminated, effective immediately.

66. Before depriving Plaintiffs of their constitutionally protected property interest in continued employment, Defendants did not conduct a pretermination hearing or otherwise afford Plaintiffs notice of the grounds for their termination or a meaningful opportunity to respond.

67. Defendants' actions in depriving Plaintiffs of their constitutionally protected property interest in continued employment, absent a pre-termination hearing or other notice of the grounds for their terminations and an opportunity to respond, abridge their right to due process of law in violation of the Fourteenth Amendment to the United States Constitution.

68. Plaintiffs' reputation and their opportunity to pursue future employment constitute a constitutionally protected liberty interest.

69. At or around the time of Plaintiffs' termination, Defendant **Davis** and/or other

agents of Defendant **41B District Court** and **Clinton Township** publicly leveled charges and claims against Plaintiffs which stigmatized Plaintiffs and severely damaged Plaintiffs' opportunity for future employment.

70. Said claims and charges were false.

71. Said claims and charges were widely publicized.

72. Said claims and charges were implicated in the dismissal process.

73. Plaintiffs were denied a meaningful name clearing hearing prior to their termination.

74. Defendants' actions in depriving Plaintiffs of their constitutionally protected liberty interest in their reputation and their opportunity to pursue future employment by terminating them without a name clearing hearing or other notice of the grounds for their termination and an opportunity to respond abridge their right to due process of law in violation of the Fourteenth Amendment to the United States Constitution.

75. At all times material hereto, Plaintiffs had a clearly established right to due process of law of which a reasonable public official would have known.

76. As a direct and proximate result of Defendants' wrongdoing, Plaintiffs have sustained loss of earnings and earning capacity, past and future lost earnings, the value of fringe and pension benefits, loss of job and career opportunities, damage to their good names and reputations in the community, mental and emotional distress, humiliation and embarrassment, loss of the enjoyment of the ordinary pleasures of everyday life, and loss of the ability to pursue employment of choice.

COUNT III
Wrongful Discharge-Breach of Implied Contract and Legitimate Expectations

77. Plaintiffs repeat and reallege the allegations set forth in Paragraphs 1 through 76 as though set forth in full herein.

78. Defendant **Clinton Township** at all times material hereto, maintained a written disciplinary action policy and/or procedure requiring "just cause" for termination, and a practice of not terminating employees without good or just cause.

79. The aforementioned policy and/or procedure and/or practice applied to employees of Defendant **Clinton Township** and Defendant **41B District Court**, Clinton Township division, including Plaintiffs.

80. As Chief Judge of Defendant **41B District Court**, Defendant **Davis** by law was required to follow, with respect to court employees at the Clinton Township division, including Plaintiffs, personnel policies consistent with Defendant **Clinton Township's** written employment policies, including the aforementioned disciplinary action policy and/or procedure and/or practice of Defendant **Clinton Township**.

81. Defendant **Clinton Township's** written disciplinary action policy and/or procedure requires that employees be given progressive discipline including an oral warning, written warning, one-day suspension and five-day suspension prior to discharge.

82. Defendant **Clinton Township's** written disciplinary action policy and/or procedure and/or practice requires that employees not be discharged without good or just cause.

83. Throughout the course of their employment with Defendants, Plaintiffs relied on the policies, practices and procedures of Defendants, which provided that employees

would not be terminated without good or just cause.

84. The aforementioned policies, practices and procedures constituted an implied contract of employment between Plaintiffs and Defendants.

85. Defendants' policies, procedures, and practices created a reasonable expectation of continued employment in Plaintiffs and other employees of Defendants.

86. Contrary to Defendants' policies, practices and procedures, Plaintiffs were terminated on July 15, 2004, without notice, warning, or cause.

87. As a direct and proximate result of Defendants' wrongdoing, Plaintiffs have sustained loss of earnings and earning capacity, past and future lost earnings, the value of fringe and pension benefits, loss of job and career opportunities, damage to their good name and reputation in the community, mental and emotional distress, humiliation and embarrassment, loss of the enjoyment of the ordinary pleasures of everyday life, and loss of the ability to pursue employment of their choice.

COUNT IV
***Tortious Interference with a Contractual Relationship
and/or Business Expectancy (vs. Defendant Davis)***

88. Plaintiffs repeat and reallege the allegations set forth in Paragraphs 1 through 87 as though set forth in full herein.

89. Plaintiffs had an advantageous employment relationship or expectancy with Defendants.

90. Plaintiffs had a just cause employment relationship with Defendants.

91. Defendant Davis was aware of the aforementioned advantageous employment relationship or expectancy with Defendants and Plaintiffs' just cause employment relationship with Defendants.

92. Defendant **Davis**, without justification and acting outside the scope of her authority, intentionally and improperly interfered with Plaintiffs' advantageous employment relationship or expectancy and their just-cause employment relationship.

93. Defendant **Davis's** actions in intentionally and improperly interfering with Plaintiffs' advantageous employment relationship or expectancy and their just-cause employment relationship were done for personal motives.

94. As a direct and proximate result of Defendants' wrongdoing, Plaintiffs have sustained loss of earnings and earning capacity, past and future lost earnings, the value of fringe and pension benefits, loss of job and career opportunities, damage to their good name and reputation in the community, mental and emotional distress, humiliation and embarrassment, loss of the enjoyment of the ordinary pleasures of everyday life, and loss of the ability to pursue employment of their choice.

COUNT V
Defamation

95. Plaintiffs repeat and reallege the allegations set forth in Paragraphs 1 through 94 as though set forth in full herein.

96. The statement that Plaintiffs lied during the management oversight investigation by government authorities and were terminated for lying in said investigation is false.

97. Defendant **Davis** and/or other agents of Defendants **41B District Court** and **Clinton Township** reported and published to a local newspaper and other third parties that Plaintiffs lied during a management oversight investigation by government authorities and were terminated for lying in said investigation.

98. Defendants' representations that Plaintiffs lied during a management oversight

investigation by government authorities and were terminated for lying in said investigation were false and malicious.

99. Defendants knew that the information was false or misleading.
100. Defendants published the remarks to third parties with knowledge of the falsity of the statements or in reckless disregard of truth or falsity.
101. Defendants' statements were not privileged.
102. Defendants made the false statements in order to prejudice Plaintiffs in the conduct of their business or to deter others from dealing with them.
103. Defendants' statements were defamation *per se*.
104. Defendants' defamatory statements resulted in seriously damaging Plaintiffs' reputation.
105. As a direct and proximate result of Defendants' wrongdoing, Plaintiffs have sustained loss of earnings and earning capacity, past and future lost earnings, the value of fringe and pension benefits, loss of job and career opportunities, damage to their good name and reputation in the community, mental and emotional distress, humiliation and embarrassment, loss of the enjoyment of the ordinary pleasures of everyday life, and loss of the ability to pursue employment of their choice.

COUNT VI
Michigan's Whistleblower Protection Act

106. Plaintiffs repeat and reallege the allegations set forth in Paragraphs 1 through 105 as though set forth in full herein.
107. Plaintiffs Englar and Diehl were employees, and Defendants 41B District Court, Davis, and Clinton Township their employer, within the meaning of Michigan's

Whistleblower Protection Act, Mich. Comp. Laws 15.361 et seq; Mich. Stat. Ann. 17.428(1) et seq.

108. Defendants were aware that Plaintiffs had participated in an investigation by a public body, and had testified truthfully in said investigation.

109. Defendants terminated Plaintiffs' employment and otherwise retaliated against them because they participated in an investigation by a public body, and for testifying truthfully in said investigation.

110. Defendants' actions were intentional and in disregard for the rights and sensibilities of Plaintiffs.

111. The retaliatory conduct of Defendants and their agents is a violation of Michigan's Whistleblowers' Protection Act. Mich.Comp.Laws 15.362; Mich.Stat.Ann. 17.428(2).

112. As a direct and proximate result of Defendants' wrongdoing, Plaintiffs have sustained loss of earnings and earning capacity, past and future lost earnings, the value of fringe and pension benefits, loss of job and career opportunities, damage to their good name and reputation in the community, mental and emotional distress, humiliation and embarrassment, loss of the enjoyment of the ordinary pleasures of everyday life, and loss of the ability to pursue employment of their choice.

COUNT VII
Public Policy Tort

113. Plaintiffs repeat and reallege the allegations set forth in Paragraphs 1 through 112 as though set forth in full herein.

114. During the course of their employment with Defendants, Plaintiffs refused to

provide false and misleading information in a government investigation.

115. Plaintiffs were discharged by Defendants, as described above, for their refusal to provide false and misleading information in a government investigation.

116. Plaintiffs' discharge violates clearly established public policy of the State of Michigan that an employer may not condition continued employment on an employee's refusal to violate the law or retaliate against an employee attempting to comply with applicable laws.

117. As a direct and proximate result of Defendants' wrongdoing, Plaintiffs have sustained loss of earnings and earning capacity, past and future lost earnings, the value of fringe and pension benefits, loss of job and career opportunities, damage to their good name and reputation in the community, mental and emotional distress, humiliation and embarrassment, loss of the enjoyment of the ordinary pleasures of everyday life, and loss of the ability to pursue employment of their choice.

RELIEF REQUESTED

Wherefore, Plaintiffs Nancy Englar and Carol Diehl demand judgment against Defendants as follows:

A. Legal Relief:

1. Compensatory damages in whatever amount they are found to be entitled;
2. Exemplary damages in whatever amount they are found to be entitled;
3. Punitive damages in whatever amount they are found to be entitled;
4. An award of interest, costs and reasonable attorney fees.

B. Equitable Relief:

1. An order from this Court reinstating Plaintiffs to the position they would have held had there been no wrongdoing by Defendants.
2. An injunction from this Court prohibiting any further acts of retaliation against Plaintiffs.
3. An award of interest, costs and reasonable attorney fees.
4. Whatever other equitable relief appears appropriate at the time of final judgment.

DEBORAH L. GORDON, PLC

By D.L. Gordon
Deborah L. Gordon (P27058)
Attorneys for Plaintiff
33 Bloomfield Hills Parkway, Suite 275
Bloomfield Hills Michigan 48304
Telephone 248 258 2500

Dated: October 12, 2004

DEMAND FOR TRIAL BY JURY

Plaintiffs Nancy Englar and Carol Diehl, by their attorneys, Deborah L. Gordon, PLC, demand a trial by jury of all the issues in this cause.

DEBORAH L. GORDON, PLC

Dated: October 8, 2004

By D.L. Gordon
Deborah L. Gordon (P27058)
Attorneys for Plaintiff

JS 44 11-09

CIVIL COVER SHEET COUNTY IN WHICH THIS ACTION AROSE: Macomb County

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet.

I. (a) PLAINTIFFS
NANCY ENGLAR
CAROL DIEHL

(b) County of Residence of First Listed Plaintiff:

Macomb County

26049

DEFENDANTS
41B DISTRICT COURT, and CHIEF JUDGE LINDA DAVIS of the
41B District Court at: 1 Crocker Boulevard, Mt. Clemens Michigan;
CHARTER TOWNSHIP OF CLINTON at: 40700 Romeo Plank Road,
Clinton Township, Michigan

County of Residence of First Listed Defendant:

Macomb County

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE
LAND INVOLVED**(C) ATTORNEYS (FIRM NAME, ADDRESS AND TELEPHONE NUMBER)**Deborah L. Gordon (P27058)
33 Bloomfield Hills Parkway, Suite 275
Bloomfield Hills Michigan 48304
Phone 248 258 2500

ATTORNEYS (IF KNOWN)

GERALD E. ROSEN

MAGISTRATE JUDGE SCHEER

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
 3 Federal Question (U.S. Government Not a Party)
 2 U.S. Government Defendant
 4 Diversity (Indicate Citizenship of Parties in item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box For Plaintiff And One Box for Defendant)

	PLA	DEF	PLA	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4 <input type="checkbox"/> 4
Citizen of Another	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5 <input type="checkbox"/> 5
Citizen or Subject of Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6 <input type="checkbox"/> 6

IV. NATURE OF SUIT (PLACE AN "X" IN ONE BOX ONLY)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	<input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 362 Personal Injury—Med. Malpractice <input type="checkbox"/> 365 Personal Injury—Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 : 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157
		<input type="checkbox"/> PERSONAL PROPERTY	<input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410
		<input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 861 HIA (1395J) <input type="checkbox"/> 862 Bankruptcy <input type="checkbox"/> 863 HAW (405(j)) <input type="checkbox"/> 864 SSDI Title XVI <input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act
		<input type="checkbox"/> 390 Product Liability <input type="checkbox"/> 400 Other Civil Rights	<input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Emplo. Ret. Inc. Security Act	<input type="checkbox"/> 865 IRS — Third Party 26 USC 7609
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	FEDERAL TAX SUITS	<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 441 Voting <input checked="" type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/ Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 510 Motions to Vacate Sentence POSSIBLE COMPANION CASE <input type="checkbox"/> HABEAS CORPUS: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS — Third Party 26 USC 7609	

V. ORIGIN (PLACE AN "X" IN ONE BOX ONLY) 1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from another district (specify) 6 Multidistrict Litigation

Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause.)

Do not cite jurisdictional statutes unless diversity)

Retaliatory discharge in violation of 42 USC §1983, and the First and Fourteenth Amendments to the United States Constitution.

COMPLAINT: UNDER F.R.C.P. 23

JURY DEMAND:

 YES NO**VIII. RELATED CASE(S)** (See instructions):

IF ANY

Barachkov v. 41B District Court et al

JUDGE Paul D. Borman

DOCKET NUMBER 04-73957

DATE

October 11, 2004

SIGNATURE OF ATTORNEY OF RECORD

X D. E. Rosen

PURSUANT TO LOCAL RULE 83.11

1. Is this a case that has been previously dismissed?

Yes
 No

If yes, give the following information:

Court: _____

Case No.: _____

Judge: _____

2. Other than stated above, are there any pending or previously discontinued or dismissed companion cases in this or any other court, including state court? (Companion cases are matters in which it appears substantially similar evidence will be offered or the same or related parties are present and the cases arise out of the same transaction or occurrence.)

Yes
 No

If yes, give the following information:

Court: Eastern District of Michigan

Case No.: 04-73957

Judge: Paul D. Borman

Notes:

Companion case is currently pending.
